IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

J U D G M E N T

Laxmi Narain & another Vs. State of Rajasthan

D.B.CRIMINAL APPEAL NO.19/1987
against the judgment dt.18.12.1986 passed by
the Sessions Judge, Jodhpur,
in Sessions Case No.14/1985.

Date of Judgment: Oct.23, 2007

P R E S E N T

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE DEO NARAYAN THANVI

Mr.D.K.Purohit)
Mr.Sandeep Mehta) for appellants.

Mr.J.P.S.Choudhary, Public Prosecutor.

BY THE COURT: (PER THANVI J.)

1. This appeal is directed against the judgment and order dated 18.12.1986 passed by the learned Sessions Judge, Jodhpur, whereby he convicted the accused appellants Laxmi Narain & Sunder for the offences under sections 302 and 302 read with Sec.34 IPC respectively & sentenced them to life

imprisonment & a fine of Rs.500/- was imposed on appellant Laxmi Narain and Rs.100/- was imposed on appellant Sunder.

2. Facts leading to this appeal are that one Poona Ram filed a report on 24.10.1984 at 6 P.M. at Police Station, Khanda Phalsa, Jodhpur, wherein he stated that his son Ladu Ram, student of Class X left the home on 22.10.1984 at 6 P.M. with books & bicycle for Lucky College, Jodhpur and did not return. On 25.10.1984, he filed another report about the articles and clothes which he was wearing and alleged that Kanwarlal's sons might have kidnapped his son and got murdered, as he previously threatened him on account of the dispute about the agricultural land. Upon this report, a case for the offences under sections 364 & 365 IPC was registered and investigation was commenced. During investigation, the police arrested the accused appellants alongwith Babulal and Kalu Ram and recovered certain articles like wrist watch, gold `lung' (ear pin), silver ring, bone pieces, hair soil etc. of the deceased. On the basis of the statement of Balveer Singh (PW 10) under Section 164 CrPC and other recoveries made in pursuance to the informations furnished under Sec.27 of the Evidence Act, the accused persons were challaned and were committed by the learned magistrate to the Court of Sessions, where all the four accused were charged under Sections 302, 302 read with 34,

201 and 201 r/w 34 and 404 IPC. The prosecution examined 21 witnesses. The statements of the accused persons were recorded under Section 313 CrPC. They led no evidence. After hearing the arguments, the learned Sessions Judge, Jodhpur acquitted accused Babulal and Kalu Ram for the charges levelled against them but convicted & sentenced accused Laxmi Narain and Sunder as stated above on the ground that there was previous enmity of deceased with accused Laxmi Narain and he was last seen by Balveer Singh in the house of Murlidhar Dhoot on 22.10.1984 in the night at 9 P.M., where both the accused appellants used force against the deceased, who was not seen till the delivery of the judgment.

3. We have heard learned counsel for the appellants and the learned Public Prosecutor & have carefully gone through the record of the case.

4. It has been contended by the learned counsel for the appellants that the judgment of the learned Sessions Judge is totally based on surmises and conjectures. On one hand, the learned Sessions Judge has disbelieved the theory of recovery in the absence of proper identification and on the other hand, he has based his conviction on the basis of solitary testimony of Balveer Singh (PW 10), who is said to be the eye witness and

who disclosed about the incident after one month and seven days. According to the learned counsel, neither the dead body had been recovered nor the corpus delicti was produced so as to ascertain the cause of death.

5. On the other hand, learned Public Prosecutor has supported the judgment of the learned Sessions Judge.

6. We have gone through the evidence on record and findings arrived-at by the learned Sessions Judge. We are astonished to observe that this is a case in which the accused appellants have been charged for culpable homicide amounting to murder but the basic ingredients of appreciation of evidence in a criminal trial have been altogether ignored by the learned Sessions Judge. The finding of conviction is recorded only when evidence led by the prosecution leads to no other conclusion except the guilt of the accused, either on account of direct or circumstantial evidence. Here, in the present case, almost all vital factors, especially the evidence relating to the recovery of articles found on the spot which were worn by the deceased, has been held to be disbelieved. Even the dead body has not been recovered so far to prove the factum of culpable homicide. The sole ground of conviction upon which the learned Sessions Judge has believed, is the solitary statement of the alleged eye witness Balveer Singh

(PW 10), who has said that he called the deceased in the house of Murlidhar Dhoot for the purpose of electric repairing work two days prior to Deepawali. He has stated that he saw the accused appellants Laxmi Narain and Sunder pulling rope around the neck of deceased and thereafter he left and did not inform anyone for one month and seven days because he was threatened by Laxmi Narain to be killed. He has also stated that he came to know about the enmity of Laxmi Narain and family of the deceased on account of dispute as to agriculture land later-on and that was the reason, which the learned Sessions Judge has believed to be the motive for the cause of death. In our view, a person who was silent for about 37 days in disclosing the fact of murder, merely because he was threatened by one of the accused, cannot be a trustworthy witness, on whose testimony, conviction of heinous crime like murder is based. The reasons for not disclosing the fact of such an incident for such a long interval on account of threatening is a very flimsy version, especially when there is no incriminating evidence to connect the accused with the commission of crime. The whole judgment resting on the solitary testimony of an unreliable eye witness, is based on surmises and conjectures, which cannot be sustained in the eye of law. Even the learned Sessions Judge has not relied upon the statement of Balveer Singh with regard to threatening given by the accused appellant Laxmi Narain to deceased about killing as

also the so called extra judicial confession of accused Laxmi Narain before Pokar Ram, the father of deceased.

7. We are constrained to observe that where a case is neither based on reliable direct evidence nor on circumstantial evidence, how the learned Sessions Judge arrived at the conclusion of guilt of the accused. In a direct evidence case, the evidence must be of the fact that the eye witness has seen the accused while inflicting blow or other injury on the body of deceased and in the circumstantial evidence, the entire chain of events should be of such a nature which leads to no other conclusion except the guilt of the accused. In the present case, even the learned Sessions Judge has not believed the theory of circumstantial evidence and the direct evidence of Balveer Singh on whose solitary statement, the conviction has been based, is of such a flimsy character, which inspires no confidence at all, if viewed from any angle. The incident of manslaughter by strangulation is said to have taken place in the mid of the City at 9 P.M. in a posh area and nobody has seen either the deceased or the accused with any movement. Even the recoveries of the so called articles used in commission of the crime and which were worn by the deceased, were not properly identified. There was no reason to rely upon the testimony of a person who has stated the version after a long period of 37 days of the incident, especially when

neither the blood stains were found on the spot nor the dead body was recovered. Had there been any such act of manslaughter by strangulation etc., there should have been some mark of incident in the site plan but as revealed from the site plan Ex.P.5, there was no incriminating trace or marks found in the house. On the contrary, it is written in the site plan that the house was clean. The site has been inspected on 4th December, 1984. All these factors lead to the irresistible conclusion that on account of trivial enmity due to dispute about agriculture land and pending proceedings under Section 107 CrPC, the accused has been wrongly implicated in a charge of murder, when the police failed to detect the deceased or his dead body.

8. In view of the above discussion, we are unable to confirm the finding of guilt arrived-at by the learned Sessions Judge, Jodhpur in convicting accused appellants Laxmi Narain & Sunder.

9. Accordingly, we allow this appeal, set aside the judgment of the learned Sessions Judge, Jodhpur dated 18.12.1986 and acquit the accused appellants Laxmi Narain and Sunder for the

offence under Section 302 and 302/34 respectively. As the appellants are on bail, their bail bonds stand cancelled.

(DEO NARAYAN THANVI), J. **(BHAGWATI PRASAD), J.**

RANKAWAT JK, PS